

Editor's note: Appealed -- aff'd, Civ.No. 84-583 (E.D. Okla. June 30, 1986), aff'd, No. 86-2146 (10th Cir. Nov. 23, 1988), petition for rehearing denied (Feb. 17, 1989), cert denied sub nom. East Texas Steel Facilities v. Lujan, No. 88-1962 (Oct. 2, 1989), 493 U.S. 815

LONE STAR STEEL CO.

IBLA 83-196

Decided February 24, 1983

Appeal from a decision of the New Mexico Office, Bureau of Land Management, rejecting objections against the imposition of certain readjusted terms and conditions. on coal and lease BLM-C 018820 OK.

Affirmed in part; set aside in part and remanded.

1. Coal Leases and Permits: Leases -- Mineral Leasing Act: Generally

Where coal leases issued under the provisions of sec. 7 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 207 (1976), provide that the United States may readjust their terms and conditions at the end of 20 years, a decision by BLM to include additional requirements will be affirmed where the readjusted provisions objected to by the lessee are mandated by statute and/or regulation.

APPEARANCES: William A. Osborn, Esq., Operations Counsel for Lone Star Steel Company.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Lone Star Steel Company (Lone Star) appeals from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated October 19, 1982, rejecting objections against the imposition of certain readjusted terms and conditions on coal lease BLM-C 018820 OK.

A previous lease of these coal deposits was assigned to Lone Star in 1956. In 1962, upon expiration of that coal lease, Lone Star was issued a new lease in lieu of readjusting the prior lease. In a notice dated October 30, 1981, BLM notified Lone Star in advance of the 20th anniversary of the subject lease that there would be a readjustment of the lease terms and conditions pursuant to the provisions of 43 CFR 3451. Subsequently, BLM notified Lone Star of specific alterations in the lease terms and conditions.

Lone Star objected timely to the inclusion of sections 3, 5, 6, 11, 15, 16, and 17 of the readjusted lease terms. By decision dated October 19,

1982, BLM held that these readjusted lease provisions were properly imposed, stating in part:

In response to the objections to the terms under sections 3, 6, 11, 15, 16 and 17 of the readjusted lease for BLM-C 018820 OK, we refer to the enclosed copies of our decision of October 26, 1981, and the decision of the Interior Board of Land Appeals, dated June 29, 1982, affirming our decision (65 IBLA 147). These decisions set out the reasons for the inclusion of each of these lease terms.

Regarding the objection to section 5 of the readjusted of the readjusted lease, the rental rate of \$3 per acre or fraction thereof is the minimum which can be charged in accordance with 43 CFR 3473.3-1.

Lone Star then appealed to this Board contending the same arguments presented in Lone Star Steel Co., 65 IBLA 146 (1982). Appellant's previous appearance before this Board involved the same issues, but different leases. Appellant does not offer opposition or comment to that prior decision in its statement of reasons, and it does not present any arguments, aside from those pertaining to section 5 of the readjusted lease, which were not addressed in the first Lone Star decision, supra.

[1] At the time the lease was issued, section 7 of the Mineral Leasing Act of 1920, provided: "[T]hat at the end of each twenty-year period succeeding the date of the lease such readjustment of terms and conditions may be made as the Secretary of the Interior may determine unless otherwise provided by law at the time of the expiration of such periods." See 30 U.S.C. § 207 (1970). BLM readjusted the rental and royalty terms of the lease, and imposed other conditions consonant with section 6 of the Federal Coal Leasing Amendments Act of 1976 (FCLAA), 30 U.S.C. § 207 (1976). FCLAA requirements may be imposed on pre-FCLAA leases at the time of readjustment. See Solicitor's Opinion, M-36939, 88 I.D. 1003 (1981); Coastal States Energy Co., 70 IBLA 386 (1983).

Where readjusted lease terms or conditions are addressed by statute or regulations, BLM is required to impose those terms and conditions. Likewise, this Board must apply those provisions imposed by law, and we are without authority to waive or disregard legal obligations merely because a lessee challenges their imposition in the administrative appeals process. Lone Star Steel Co., supra at 150. Decisions by BLM imposing statutory or regulatory requirements will be affirmed. Section 3 -- Diligence, section 5 -- Rental, section 6 -- Production Royalty, section 11 -- Logical Mining Unit (LMU), section 15 -- Equal Opportunity Clause, section 16 -- Certification of Nonsegregated Facilities, and section 17 -- Employment Practices all involve statutory or regulatory requirements.

At the time of readjustment of the lease in question the regulations defined the diligence standard as requiring coal production in commercial quantities before June 1, 1986, for pre-FCLAA leases. However, prior to BLM's decision in this case the diligence requirement was changed. In final

rulemaking published in the Federal Register on July 30, 1982, "diligent development" was defined as "the production of recoverable coal reserves in commercial quantities prior to the end of the diligent development period." 30 CFR 211.2(a)(13), 47 FR 33180 (July 30, 1982). The rulemaking further defined "diligent development period" as "a 10-year period which: (i) For Federal leases shall begin on * * (B) The effective date of the first lease readjustment after August 4, 1976, for leases issued prior to August 4, 1976 * * *." 30 CFR 211.2(a)(14), 47 FR 33180-81 (July 30, 1982). In the preamble to this rulemaking the Department stated:

The DOI has determined that the congressional intent in mandating this 10-year period was prospective. The statutory period cannot be applied retroactively to Federal leases issued prior to August 4, 1976. Upon the first lease readjustment after August 4, 1976, this 10-year mandate must, however, be imposed as a readjusted Federal lease term (see Solicitor's Opinion M-36939 dated September 17, 1981).

47 FR 33157 (July 30, 1982). Thus, since our previous decision the regulations have been amended to reflect a 10-year period from the effective readjustment of the lease in which the lessee is required to attain "production in commercial quantities." In response to appellant's assertions that "sections 3 and 11 are simply unreasonable" and equitable considerations should be employed, we note that the regulations now define "commercial quantities" to mean "1 percent of the recoverable coal reserves or LMU recoverable coal reserves." 30 CFR 211.2(a)(7), 47 FR 33180 (July 30, 1982). The regulations require such production. We are without authority to waive that legal obligation. Coastal States Energy Co., supra.

Given the change in the requirement for diligent development, BLM's decision as it related to that requirement must be set aside and remanded so that the lease may be conformed to the regulations.

Section 5, concerning the rental term, is specifically required by 43 CFR 3473.3-1(a), which provides that "[t]he annual rental per acre or fraction thereof on any lease issued or readjusted after the promulgation of this subpart shall not be less than \$3. The amount of the rental will be specified in the lease." Section 5 of the readjusted lease provides for a rental of \$3 per acre or fraction thereof. Appellant objects, stating that the Federal Government is entitled only to royalties where it does not own the surface estate. ^{1/} BLM properly imposed the new rental to comport with the regulatory and statutory requirement.

Appellant is incorrect in stating that the provision for rental payments is designed for land in which the United States holds title to both the surface and mineral estates. Originally, the Mineral Leasing Act of 1920,

^{1/} The records do not reflect the actual ownership of the surface estate or the total extent of Federal interest in the subject lands, but this is immaterial in light of the fact that the United States has leased to appellant all the rights, privileges, and interests necessary for the extraction of the coal deposits owned by it.

section 7, began: "For the privilege of mining or extracting the coal in the lands covered by the lease the lessee shall pay to the United States such royalties * * * and an annual rental * * * on the lands or coal deposits covered by such lease" Pub. L. 66-146 § 7, 41 Stat. 437, 439 (1920). That declaratory language was excluded by FCLAA without explanation. See 1976 U.S. Code Cong. and Ad. News 1943. As amended, section 7 now reads: "The Secretary shall by regulation prescribe annual rental on leases." 30 U.S.C. § 207 (1976). The rental assessed for a federal coal lease represents payments for the exclusive use of whatever interest the United States possesses pertinent to the extraction of that coal deposit. In situations where the United States does not own the surface estate, the lease normally will include the surface rights that have been obtained or reserved which are reasonably necessary to the extraction of the mineral. However, in any event, the per acre rental is an appropriate charge for the lease of the federally owned mineral estate, which is held and leased on an acreage basis.

As for appellant's objections to sections 6, 11, 15, 16, and 17 of the readjusted lease, we will simply refer and adhere to our previous holdings in Lone Star Steel Co., supra, as dispositive of the arguments presented again in this case.

Appellant has failed to establish error in the readjustment process or in the challenged terms and conditions in sections 5, 6, 11, 15, 16, and 17. BLM properly rejected appellant's objections and commendably provided an explanation of the rationale for the imposition of these sections in appellant's coal lease BLM-C 018820 OK. The BLM decision as it pertains to these sections is affirmed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part and set aside as to the diligent development requirement, and remanded.

Edward W. Stuebing
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

